

# ECCLESIASTICAL PATRONAGE . . . .

## IN SCOTLAND IN THE LATER MIDDLE AGES

BY THE REV. GEORGE P. INNES, B.D., LL.B., PH.D.

IN this paper we are concerned with one aspect of church patronage in the later Middle Ages; namely, papal intervention in the disposal of benefices, or, more technically, with papal provisions. Opinion has reacted rather sharply against the older view which regarded papal provisions simply as an abuse, like pluralism or non-residence.<sup>1</sup> It was one aspect of the centralisation of church government which, initiated in the twelfth and thirteenth centuries, had been continued into the later medieval period, and ran parallel to the growth of centralised power in the national states. It was centralisation applied to patronage, just as appeals to Rome, the use of judges-delegate and so forth represented centralisation as applied to the judicial system.<sup>2</sup> To what extent and for what ends did the papacy interfere with the ordinary processes of patronage as exercised by the Crown, by lay magnates, by bishops and abbots and the local lairds?

We need be in no two minds about the importance of this subject. The question of papal provisions was not a side issue, but was one of the major issues in the relation between Church and State in the later medieval period. And papal patronage, with papal finance, was at the heart of the opposition that culminated in Protestantism. Dr. G. Barraclough has pointed out that during a few weeks in 1342, the Papal Curia at Avignon disposed of no less than one hundred thousand benefices. Circumstances in that year were no doubt unusual, owing to the attitude of Benedict XII, but there was nothing exceptional about the practice of provisions. In every country of Europe benefices were affected, and in every year benefices were affected in thousands, and it may be even in tens of thousands. This is the explanation of the insistence of medieval critics in regard to what seems to us to be merely a technical matter of ecclesiastical administration. If the question of papal provision were merely that, then it would have little historical significance today. But, in actual fact,

<sup>1</sup> G. Barraclough, *Papal Provisions*.

<sup>2</sup> W. A. Pantin, *The English Church in the Fourteenth Century*, p. 47. See also D. Knowles, *Religious Life and Organisation*, pp. 421ff, *In Medieval England*, ed. A. L. Poole, (1958).

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the very vastness of the system made it the most practical, unavoidable issue in church politics during the later Middle Ages.<sup>1</sup>

The development of the system may be studied in the works of G. Mollat.<sup>2</sup> The practice of papal provision to a benefice had quite a simple origin, and was simple in itself. It began in the twelfth century, and in form was a request to an ecclesiastic to provide a clerk whom the pope wished to help, or to whom he wished to show favour with a benefice. It began with a request; but as C. R. Cheney remarks, where Rome was concerned, requests had a way of hardening into commands.<sup>3</sup> "Summi pontificis voluntas decretum est," wrote John of Salisbury to the bishop of Worcester (1158-60) concerning a request of the Pope for a benefice.<sup>4</sup> When the Pope wrote "volumus et mandamus," he meant to be obeyed.<sup>5</sup> In 1175 the abbey of St. Edmunds, through their messenger at Rome, asked to be relieved of the need to find benefices for certain persons on whose behalf the Pope had written. But although, as Alexander III replied, he "wished and desired to love and cherish the abbey and convent as his devoted and favourite children and to spare them burdens," yet he would not take "no" for an answer.<sup>6</sup>

No doubt the court of Rome was of such importance that many patrons of benefices were glad to use their patronage to purchase friends at court, and would be quite prepared to accede to papal requests for benefices.<sup>7</sup> According to Gerald of Wales, English bishops regarded expenditure on "cardinals and their nephews" as a necessary part of their annual budget.<sup>8</sup> The king felt the same need. But when all allowance

<sup>1</sup> Barraclough, *op. cit.*, p. viii, p. 31 n.2. Peter of Herenthals estimated the number of impetrants between 19 May and 25 June, 1342 at 100,000. (Baluze-Mollat, *Vitae paparum Avenionensium* 1, 298). Some 6,000 candidates from the dioceses of Mainz and Köln alone were examined in the Curia; cf. Berlière, *Suppliques de Clement*, VI, 579.

<sup>2</sup> Mgr. Guillaume Mollat, *La Collation des Bénéfices ecclésiastiques*, in *Lettres Communes De Jean XXII*; also *Les graces expectatives du xii au xiv siècle*, Rev. d'hist. ecclésiastique, xlvi (1947), pp. 81-102.

<sup>3</sup> C. R. Cheney, *From Becket to Langton*, p. 79.

<sup>4</sup> "Voluntas domini papae pleniore benignitate interpretanda erat. Vulgo dici solet et acceptum fideliter verum est, quia summi pontificis voluntas decretum est." *The Letters of John of Salisbury*, ed. W. J. Millor and H. E. Butler, and revised by C. N. L. Brooke, Letter 98, p. 152. (1955).

<sup>5</sup> H. Baier, *Päpstliche Provisionen*. (Munster, 1911), pp. 204-11.

<sup>6</sup> *Papsturkunden in England*, ed. W. Holtzmann, III, p. 350.

<sup>7</sup> See Mollat, *Les Papes d'Avignon*, pp. 475-476. Bishop Hatfield of Durham collated the cardinal, Simon Langham, to the rectory of Bishop Wearmouth in return for his support; cf. R. Donaldson, *Patronage and the Church*, Edinburgh Ph.D. thesis, 1955.

<sup>8</sup> *Opp. ii*, 332. Cf. also the celebrated dictum which is attributed to Pope Alexander III by Gerald of Wales, "The Lord deprived the bishops of sons, but the devil gave them nephews." *Opp. ii*, 304.

is made for patrons who had an eye for business, the fact remains that their freedom of action was becoming restricted by the pope's intervention.<sup>1</sup>

By the beginning of the thirteenth century the papal practice of recommending clerks for benefices had been transformed into a right to confer benefices directly or to order conferment by others on apostolic authority. The following important example quoted from F. M. Powicke marks the transition.<sup>2</sup> In 1198, at the request of Pope Innocent III, Archbishop Geoffrey of York collated a master in the Parisian schools, Peter of Corbeil, to the archdeaconry of York, and a prebend or revenues attached to the office. Peter was a distinguished man, a famous scholar, who in 1200 became Archbishop of Sens; but he had no connection with York, and did not propose to live there. The dean and canons of York did not want him, and refused to admit him. Innocent III wrote three letters. Two of these were mandates, one to the dean and canons, the other to the bishop of Ely. If the dean and canons would not admit Master Peter, the bishop was to assign him the prebend and archdeaconry, i.e., to act over their heads. The third letter was a request to King Richard, exhorting him to see that Peter got peaceful possession. Whether this was or was not a papal provision in the later sense of the term, it shows, as Powicke remarks, how the system developed. The popes issued mandates of provision to protégés or suppliants; and when they did so, appointed executors to see that the mandates were carried out. In the time of Innocent III the appointment of the executor seems to have been the last step in compulsion; after the request, the mandate and the precept had been issued in turn. The best study of the executors in canonical theory has been made by G. Barraclough, *The Executors of Papal Provisions in the Canonical Theory of the Thirteenth and Fourteenth Centuries*.<sup>3</sup> Barraclough has pointed out that pressure on Innocent IV led to greater precision in the form of letters, more insistence upon the qualifications of the petitioner and distinction between definite provisions and expectant rights.

The theoretical basis of this development, that is the development of papal provisions, is to be found in current conceptions of papal power, that all church property was at the disposal of the papacy. In *Foundations of the Conciliar Theory*,<sup>4</sup> B. Tierney has shown that in earlier discussions of the ownership of church property, although there were different

<sup>1</sup> Stubbs, *Constit. Hist.*, 3rd edn., iii 320; Baier, *op. cit.*, p. 16.

<sup>2</sup> F. M. Powicke, *Henry III and the Lord Edward*, I, 275.

<sup>3</sup> *Acta congressus juridici internationalis Romae*, Novembris 1934, iii, 109-53.

<sup>4</sup> B. Tierney, *Conciliar Theory*, 118-119, 140ff., 165ff.

definitions of the holder of dominium, it was generally assumed that dominium rested in some sense with the local community, with the "universitas loci" as Goffredus Tranensis put it.<sup>1</sup> Innocent IV enunciated a very influential restatement of the doctrine, suggesting that dominium was vested in the whole *aggregatio fidelium*, the Body of Christ.<sup>2</sup> The argument had this implication. If dominium rested with the universal church, the *aggregatio fidelium*, then for practical purposes all ecclesiastical property could be regarded as at the disposal of the earthly head of the *aggregatio fidelium*, Christ's representative, the Pope. In assuming that the Church defined as the *corpus Christi* was an entity capable of the quite prosaic function of property ownership, Innocent was apparently regarding it as not only a *corpus mysticum* but as something very like a legal corporation. As in his view the jurisdiction of a corporation was concentrated in its head,<sup>3</sup> he could quite consistently present the whole Church as a corporation, and at the same time uphold an extreme doctrine of papal monarchy in all affairs of church government.

While the whole tendency of canonistic thought in the middle of the thirteenth century was to emphasise the universal authority of the Pope and to treat the local churches as subordinate members whose unity was produced only by their common adherence to a single head, yet, as Tierney observes, it is not altogether paradoxical to treat this development as a stage in the growth of conciliar ideas. In the secular kingdoms, theories of corporate representation could flourish only after a degree of monarchical unity had been attained. So, in the ecclesiastical sphere, when the idea of the Church as a corporate unity in the more legalistic sense became accepted, there was always a possibility that it might be restated in a form that would lay all the stress on the due participation of the members rather than the unique authority of the head. The doctrine of Innocent IV on church property, for instance, could lead to the theories of John of Paris, as well as those of Giles of Rome.<sup>4</sup>

But in the mid-thirteenth century the *plenitudo potestatis*, or the

<sup>1</sup> Qtd. by Guido de Baysio, *Rosarium ad C.* 12 q. I c. 13.

<sup>2</sup> "Non praelatus sed Christus dominium et possessionem rerum ecclesiae habet . . . vel ecclesia habet possessionem et proprietatem . . . id est aggregatio fidelium quae est corpus Christi capitum." *Commentaria ad X.2.xii.4* Bernardus Compostellanus argued that although dominium over ecclesiastical property rested with the whole congregation fidelium, the use of such property belonged to the individual local churches.

<sup>3</sup> *Commentaria ad X I ii. 8*; with which should be compared the view of Hostiensis, *Lectura ad. I. ii. 8*. For Hostiensis the authority of a corporation resided not only in its head but in all its members as well.

<sup>4</sup> Tierney, op. cit. pp. 142, 165, 167. *John of Paris*, *De Potestate Regia et Papali* (ed. J. Leclercq, Paris 1942) p. 174, 23.

proposition that "omnes ecclesiae et res ecclesiarum sunt in potestate papae," was a commonplace of every-day thought. Robert Grosseteste might be critical of any misuse of provision, but he was very clear about the Pope's right. "Scio, et veraciter scio," he wrote in 1238, "domini pape et sancte Romane ecclesie hanc esse potestatem, ut de omnibus beneficiis ecclesiasticis libere possit ordinare."<sup>1</sup> And Pope Clement IV began an important decretal on this subject, *Licet ecclesiarum* (1265), by saying: "Although the full disposal of churches, parsonages, dignities and other ecclesiastical benefices is known to belong to the Roman Pontiff, so that he can not only confer these by right when they are vacant, but can also grant a right to those that shall fall vacant . . ."<sup>2</sup>

Papal provisions might be exercised by virtue of a special reservation or a general reservation. By a special reservation, the Pope reserved to himself the right to appoint to a particular benefice. By a general reservation, he reserved to himself the right to appoint to a whole class of benefices or to all the benefices in a particular area.

The first general reservation was decreed by Clement IV in 1265, when he reserved to the papacy the benefices of all who died at the Holy See.<sup>3</sup> From this time onwards new categories<sup>4</sup> of reserved benefices were added by the constitutions of Boniface VIII, Clement V and John XXII, as, for example, the famous decrees *Ex. Debito*<sup>5</sup> and *Execrabilis*<sup>6</sup>; and these, after being codified and still further extended by Benedict XII, received confirmation and what appeared to be permanent validity in the Rules of the Papal Chancery during the Schism.

Papal provision might take the form of immediate appointment to a benefice already vacant, and this was commonly the case with important

<sup>1</sup> Roberti Grosseteste *Epistolae*, ed. H. R. Laund (R. S. 1861), 145.

<sup>2</sup> *Corpus Juris Canonici*; *Sext. lib. III, tit. iv, c.2.* "Licet ecclesiarum, personatum, dignitatum aliorum que beneficiorum ecclesiasticorum plenaria dispositio ad Romanum noscatur Pontificem pertinere ita, quod non solum ipsa, quum vacant, potest de jure conferre, verum etiam jus in ipsis tribuere vacaturis . . ."

<sup>3</sup> *Corp. Jur. Canon.*; *Sext. III, iv, 2.*

<sup>4</sup> For the extension of decrees making a general reservation of certain benefices to the Papacy, see *Mollat, La Collation . . .* p. 10ff. By the time of John XXII such decrees covered the benefices of all who died at the papal court or within two days' journey of it, those of all cardinals, nuncios, papal chaplains and the chief officials of the curia and those which were vacated by an act of resignation or exchange made at the Holy See or vacated by prelates who received consecration or benediction there.

For the effect of these decrees in England in the early 14th century and the means which were adopted to counteract the increasing papal intervention in the collation of benefices, reference should be made to A. Deeley, *Papal Provision and Royal Rights of Patronage*, English Hist. Review, CLXXII, 1928, p. 497ff.

<sup>5</sup> *Extrav. Commun. I, 3, 4.*

<sup>6</sup> *Extrav. Johann. XXII, tit. 3, c. un.*

offices like bishoprics. But it might also take the form of a promise of a benefice when it should fall vacant in the future. This was called an "expectative grace," and was the method commonly used in providing to lesser benefices. In *Apostolic Camera and Scottish Benefices*, Dr. A. Dunlop describes expectative graces as papal grants bestowing prospective provision to certain ecclesiastical benefices in the event of a vacancy, and gives the following example. The presentation of a parish church might pertain to lay or ecclesiastical patrons or to the ordinary. Or it might be reserved to the disposition of the Apostolic See or another having faculty from the Pope. The effect of an expectative grace was to abrogate for that turn the right of the lawful provisor. A clerk might, for instance, obtain an expectative grace of provision to say the first canonry and prebend or perpetual vicarage to become void in the collation of the ordinary of the diocese or of the abbot of a stated monastery, or otherwise according to the terms of the grace.<sup>1</sup>

Expectative graces were a fruitful source of legislation, as they cut across the rights of legal patrons and of ordinaries, and undermined the older system of general and special reservation. Edward Lauder, an experienced benefice hunter, resigned a canonry and prebend accepted under an expectative grace "on account of the difficulty which he had in taking up the fruits, because a great number of expectants claimed a right" to the same.<sup>2</sup> The entry in the *Calendar of Supplications*<sup>3</sup> reads :

#### Concessio

Item : the said Edward supplicates that formerly the Pope made him a grace, dated 4 Kal. Feb., anno 1 (29 Jan., 1419), to two canonries with the expectation of prebends in the presentation, collation or disposition of the bishops and chapters of the churches of Glasgow and Dunkeld, as is more fully contained, etc., in virtue whereof the canonry and prebend called Glasgow primo or major were accepted in the name of Edward, and he is said to have obtained possession, or nearly so, taking up some of the fruits. (Then) Edward resigned simply the said canonry and prebend and all right which he had or alleges to have therein in the hands of the Ordinary, the Bishop of Glasgow, on account of the difficulty which he had in taking up the fruits, because a great number of expectants claimed (*vendicarunt*) a right to the said canonry and prebend. He therefore supplicates that the Pope, extending the grace, would decree that the

<sup>1</sup> A. Cameron (Mrs. A. Dunlop), *Apostolic Camera and Scottish Benefices*, p. lix.

<sup>2</sup> *Calendar of Scottish Supplications to Rome 1423-1428*: edited by Dr. A. I. Dunlop and presented by her to the Scottish History Society in memory of her husband : p. xii.

<sup>3</sup> *Ibid.*, 131.

apostolic letters and processes should remain valid in every way as if Edward had not accepted the said canonry and prebend ; notwithstanding, etc., as above.

Fiat ut petitur. O.

Rome, St. Peter's, 3 Kal. June, anno 9.

199, 45 (2 pp.†)

An earlier entry in the *Calendar*<sup>1</sup> records that Henry Ogilvy, another ambitious pluralist, found an expectative grace granted to him to be of little profit "on account of diverse other graces under a more effective date." He was able to have his letters predicated.

It is also noted that in the *Calendar* there is one reference to the reservation of months to papal expectants and to the Ordinaries. The entry,<sup>2</sup> which is dated 11 December, 1427, reads :

#### Nova Provisio

Lately, on the voidance of the parish church of Alberbuchnoch (Arbuthnott), St. Andrews diocese, by the death outwith the Roman Court of William de Balmyll, last rector, Thomas Archer, priest, St. Andrews diocese, accepted it by virtue of an expectative grace within legitimate time and had himself provided, possession following, and then a certain James Schyrmgeour intruded, also by letters of the Pope, and detains it at present unlawfully occupied. But since the said parish church fell void in a month of the Ordinary, and the Ordinary did not collate it, and since, moreover, it is alleged by some that the said church of Alberbuthnoch had devolved to the Apostolic See and is void at present, may the Pope therefore ratify the acceptance, provision and assecution of the same by the above Thomas Archer and the consequences, and provide him anew as far as need be to the said parish church of Alberbuthnoch (30 marks of old sterling), void as above or by the free resignation of the late William de Balmyll in or outwith the Roman Court ; notwithstanding the parish church of Tarwett, St. Andrews diocese (£10 of old sterling).

Fiat ut petitur. O. Fiat.

Rome, S. Apostoli, 3 Id. Dec., anno 11.

219, 208 (1<sup>1</sup>/<sub>6</sub> pp.)

The reservation of months, says Dr. Dunlop, was a development of the system of papal reservations. The Council of Constance declared that six months should belong to papal expectants and six to the Ordinaries,

<sup>1</sup> *Ibid.*, 107-108.

<sup>2</sup> *Ibid.*, 178-179.

but the practice varied from pope to pope and from one country to another.<sup>1</sup>

Mandates creating an expectant right led to another complication. Pensions were sometimes extorted by the papacy in favour of the expectants during their time of waiting, and the pension could be made the occasion for bargaining. A man with a pension preferred to hold on to it rather than to exchange it for a benefice which might involve him in legal proceedings or was worth less than he was getting. There was no end to the trouble and frustration which the claimants could cause and suffer.<sup>2</sup>

Another device which developed in Scotland in the late fifteenth century was the practice of "*resignatio in favorem*." Such resignation, made in the hand of the Pope, enabled the holder to transfer his title and reserve liferent, so that succession was determined and on his decease there was no vacancy. To meet this danger which, as R. K. Hannay<sup>3</sup> observed, threatened the rights of all patrons, affecting Crown and baronage alike, James IV reverted to the measures which James I had sought to enforce. He reintroduced permanently the system of licence, in order to place every clerical resort to Rome in benefice transactions under royal supervision.<sup>4</sup>

There was a certain amount of devolution or delegation of the right of papal provision. Thus, the bishops might be empowered by the Pope to make provisions.

On occasion the Pope granted the same right to the King. Thus, Pope Julius II granted to James IV of Scotland faculty to exercise on his own account this papal power of nomination to thirty benefices.<sup>5</sup> And the *Register of the Privy Seal* contains notes of several of the nominations made accordingly; some of them to special benefices, others to any benefice within the kingdom, vacant or next to fall vacant, which the grantee should please to accept. J. M. Thomson has pointed out that

<sup>1</sup> Dunlop, Cal. Scot. Supplic., op. cit., p. 178 n.3. For the "*reservatio mensium*" see also J. H. Baxter, *Copiale Prioratus Sanctiandree*, where document 45 (page 89) is a note of the months in which Ordinaries could present to benefices: this is the so called "*reservatio octo mensium*" which had its origin in the reforms proposed by Martin V on Jan. 20, 1418. *Ibid.*, 435; also Huebler, *Die constanzer Reformation*, p. 134 and note; J. Sznuro, *Les Origines du droit d'alternative beneficiale*, Le Rey, 1924.

<sup>2</sup> Powicke, op. cit., pp. 278-279; H. MacKenzie, *The Anti-foreign Movement in England*, in *Haskins Anniversary Essays* (1929), pp. 184-195.

<sup>3</sup> R. K. Hannay, *Scottish Crown and the Papacy* (Hist. Assoc. Scot. Publicus. New Series, no. 6, p. 10).

<sup>4</sup> *Acts of the Parliaments of Scotland*, II, 237-238, c.2.

<sup>5</sup> R. S. Mylne, *The Canon Law*, p. xxii.

such grants when made by the Pope were apparently taken to apply to livings in ecclesiastical patronage only; it would be interesting to know whether the King's nominations had a wider scope, and covered livings in lay patronage also.<sup>1</sup>

It should be stressed that the Pope did not normally interfere with livings in lay patronage, although in canonical theory they fell within his plenitude of power.<sup>2</sup> Thorough-going papalists might argue that the layman's right of patronage was not part of the common law of the church at all;<sup>3</sup> it was a matter of toleration rather than of official recognition, and patrons could not complain if the privilege was revoked. In canon 17 of the Third Lateran Council, the word "sustinuit" is used of the practice:<sup>4</sup>

"Quoniam in quibusdam locis ecclesiarum fundatores, aut haeredes eorum, potestate in qua eos ecclesia hucusque sustinuit, abutuntur; . . ."<sup>5</sup>

The lay patron read history differently. The local church was his, as his fathers had built and endowed it. The canonical limitations upon his rights as patron were the novelty, whereas in the eyes of the ecclesiastical reformer and canonist the manorial church was a bit of ecclesiastical property and was inviolable.<sup>6</sup>

In fact, however, the Pope respected lay patronage, and did not in this connection put his prerogative powers into exercise. For a time, indeed, perhaps until the pontificate of Innocent IV, there seems to have been some ambiguity in practice. But it was not long before it became established that lay patronage should not be regarded as affected, unless the

<sup>1</sup> Mylne, op. cit. p. xxii.

<sup>2</sup> Cheney, op. cit., p. 8; Barracough, op. cit. p. 43.

<sup>3</sup> This would appear to be the view of the scholarly Bp. of Lincoln, R. Grosseteste; in a lengthy discussion of jurisdiction in matters of patronage, he says: "licet contra justitiam habeantur laici ecclesiarum patroni" Ep. 72 (p. 228).

<sup>4</sup> The significance of the word is referred to in the tract *Non ponant laici*, on the famous bull, *Clericis laicos*, printed in R. Scholz, *Die Publizistik zur Zeit Philipps des Schonen und Bonifaz VIII*, p. 483.

<sup>5</sup> *Decret. III, 38, 3.* Cf. also Goffredi de Trano, *Summa*, p. 151, "Item nota quod jus patronatus de gratia dicitur obtineri . . . et hoc ideo, quia cum jus patronatus sit spirituale vel spirituali annexum, . . . laici de rigore juris non debeant ecclesiastica et maxime spiritualia tractare negotia . . . et cum ecclesiae cum suis dotibus ad ordinationes episcoporum pertineant . . . ex permissione juris procedit, ut hoc jus cadat in laicum et actus praesentandi qui mere est spiritualis. Haec tamen permissio sive gratia conversa est in jus commune et ob hoc dicitur jus patronatus annexum spirituali, cum tamen sit spirituale quia cum laicus nullum spirituale valeat possidere, possidet tamen vel quasi possidet jus patronatus."

<sup>6</sup> Powicke, op. cit., pp. 261, 285; M. Cheney in E.H.R. lvi 190ff; Robert Grosseteste, ed. D. A. Callus (1955), p. 157.

papal rescript contained a specific clause ; " non obstante si predicta ecclesia ad praesentationem laici pertineret." Such clauses were in fact very uncommon.<sup>1</sup>

Schulte's claim that in Germany alone was lay patronage exempt from papal intervention must be qualified.<sup>2</sup> In England, early in Edward II's reign, the invalidity of papal collations and reservations relating to benefices in lay patronage was regarded as a rule of English law,<sup>3</sup> although it was not denied that the Pope could confer benefices in ecclesiastical patronage. As A. Deeley remarks : " Though the decrees of general reservations make no exception in their favour, in practice the Pope respected the custom which declared such benefices to be immune. The bishops instituted without delay to benefices vacated by pluralists if they were in lay patronage, and there was no papal provision to such, though they were included in the lists sent in to the Pope."<sup>4</sup>

For Scotland, Bishop Dowden states that he does not remember any instance of papal interference with lay patronage.<sup>5</sup> But J. M. Thomson, commenting on this, points out that by the established laws of the Church there were cases in which the next presentation belonged to the Pope, whoever the patron might be ; for example, if the incumbent died at the Holy See, or within two days' journey thereof, if he vacated his benefice by accepting promotion from the Pope, if he resigned into the hands of the Pope or of a papal delegate. " In all such cases where the Crown was patron, it would seem that by the Concordat the Pope abdicated his rights of interference on whatever ground. In the case where the patronage belonged to a subject, it is evident that Parliament and the law courts maintained the patron's right very vigorously. But where the Lords of Council deal with the matter, we find that they are backing up the decision of a church court. That nominations were unpopular with the clergy, as with others, and that the ecclesiastical judges would favour the lay patron where they could may be taken for granted. But the law which they had to administer was the common law of the Church ; there

<sup>1</sup> Barraclough, op. cit., 43 ; examples of the unusual clause are to be found in *Reg. Vat.* 29 (Urbani IV, a.3), fo. 277, n. 1447 (Guiraud, n. 2398) ; *Reg. Vat.* 44 (Nich. IV, a.1.), fo. 27, n. 110 (Langlois, n. 211).

<sup>2</sup> Schulte, *Kirchenrecht II*, 327 n. 3 : but cf. for France, Haller, *Papstl. u. Kirchenreform*, 36n. 2. ; and for England and Scotland, see text and footnotes.

<sup>3</sup> *Year Book*, 3 and 4 Ed. II (Seld. Soc.), p. 171.

<sup>4</sup> A. Deeley, *Papal Provision and Royal Rights of Patronage in the early 14th Century*, in Eng. Hist. Review, (1928), pp. 505-6 ; also Maitland, *Canon Law*, p. 67 ; E. B. Graves, in *Anniversary Essays of C. H. Haskins* (1929) ; W. T. Waugh, in Eng. Hist. Review, (1922), 173ff.

<sup>5</sup> J. Dowden, *The Medieval Church in Scotland*, p. 108.

is, I think, no evidence that there was any recognised custom of Scotland derogating from the common law in this matter."<sup>1</sup>

But whether or not there was direct interference with livings in lay patronage, papal provisions hit laymen indirectly as patrons of religious houses and churches through the loss of custody rights.<sup>2</sup> And papal provisions clashed with the King's right to exercise episcopal patronage during the vacancy of a see which was a source of complicated strife in England and France, as well as in Scotland. There was the further consideration that as sees founded and endowed by royal munificence were in some sense Crown property, the King had a right to prevent their livings being monopolised. Here we have a view of church property diametrically opposed to that of Innocent IV. The story of the tension between the two forms a good part of church history.

<sup>1</sup> Mylne, op. cit., xxiii iv : cf. also *Acta Dominorum Concilii et Sessionis 1532-3*, Stair Society, vol. 14, p. 21 n. "Laic patronage, including the *jus praesentationis*, was commonly enjoyed by a layman in respect of his having himself built and endowed the Church or his predecessors having done so. Where there was lay patronage, the Papal Authorities did not usually intervene with nominations in vacancies, but if they did, patrons often exercised their wits to find grounds for disappointing those who came armed with such provisions."

<sup>2</sup> S. Wood, *English Monasteries and their Patrons in the 13th Century*, pp. 152ff ; for the rights of patrons, cf. also H. M. Colvin, *The White Canons*, pp. 95, 163, 304-5.

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